

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1947

NO. ~~524~~ MISS

ANDREW UPSHAW,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

Andrew Upshaw, through his attorney, Joel D. Blackwell, prays that a writ of certiorari issue to review the Judgment of the United States Court of Appeals for the District of Columbia, entered April 19, 1948, affirming petitioner's conviction of Grand Larceny in the District Court of the United States for the District of Columbia.

OPINION BELOW

The opinion of the Court of Appeals has not yet been reported.

JURISDICTION

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rules XI and XIII of the Criminal Appeals Rules promulgated by this Court May 7, 1934.

QUESTIONS PRESENTED

1. Whether the rule of McNabb v. United States, 318 U. S. 332, requires a holding that confessions made during illegal detention prior to arraignment are admissible in evidence, even though defendant was held twenty-nine (29) hours before the first alleged confession, thirty-three and a half (33½) hours before the second alleged confession and forty-one (41) hours before the third alleged confession.

2. Whether the rule of McNabb v. United States requires a holding that confessions made during illegal detention prior to arraignment are admissible in evidence, even though the arresting officer admits that the reason petitioner was not taken to Court for arraignment at the proper time, was because he (officer) did not feel that he had sufficient evidence to have petitioner held.

STATEMENT

The petitioner, hereinafter called the defendant, was charged that on May 1, 1947, he took and carried away a watch of the value of one hundred and thirty five (\$135.00) dollars, belonging to one Harriet Pearce, which was never recovered. Mrs. Pearce testified that the defendant, with another man, was sent to her home on May 1, 1947, by a window cleaning company to do some house cleaning; that she took her watch off of the dresser and put it into the dresser drawer; that four other men of the same company worked for her on May 2nd and May 3rd and that all had access to the room from which the watch was allegedly stolen. She first missed her watch about 7:00 P.M. on May 3rd, 1947. Mrs. Pearce did not make a report to police of the alleged theft until about two weeks later.

Mrs. Pearce started to testify relative to an alleged confession at her home by the defendant about 9 P.M., on June 7th, 1947. Upon objection by the defense counsel, the jury was excluded by the Court. Mrs. Pearce testified in the absence of the jury relative to the alleged confession of the defendant as to taking her watch.

The defense counsel objected to such evidence on the ground that the defendant had been detained an unreasonable time after arrest before the alleged confession was made.

TESTIMONY OF FURR AND CULPEPPER

Detectives Furr and Culpepper also testified in the absence of the jury relative to the alleged confession of the defendant. The detectives testified they arrested the defendant about 2:00 P.M., on June 6th, 1947, at his home, 1533 Eighth Street, Northwest. He was taken to the Tenth Precinct and booked for investigation. Both officers testified that the defendant denied stealing the watch when questioned at the Tenth Precinct, after his arrest (R. 19).

Detective Culpepper testified that he next questioned the defendant on the same morning about 11:00 o'clock (R. 20). He questioned the defendant about 5:00 P.M., on the same day. On each occasion the defendant denied the theft.

Detective Culpepper again questioned the defendant about 2:00 P.M., June 7th, 1947, and the defendant is alleged to have signed a voluntary confession.

When questioned under cross-examination as to why the defendant had not been taken before a committing magistrate, neither on Friday, June 6th, nor on Saturday, June 7th, Culpepper stated:

"... because I didn't feel that we had a sufficient case against him to have the police court hold him, and if the police court did not hold him, we would lose custody of him, and I no longer would be able to question him." (R. 27)

Furr testified that the next time he questioned the defendant after his arrest on June 6th, 1947, was about 9:30 A.M., the same day, and again about 7:30 or 8:00 P.M., and the defendant continued to deny the theft (R. 31).

Furr testified that the defendant signed a voluntary confession on June 7th, about 9:30 A.M. (R. 31). Culpepper admitted taking the defendant to the home of the complaining witness about 9:00 A.M., on June 7th. During the trip, a heavy storm overtook them and they had to park their car until it abated.

Culpepper, in response to the defense counsel's questioning: "Isn't it a fact that you told the defendant you were going to take him out and tie him to the car and drag him to his death," asked the Court if he had to answer that. When the Court ruled he did, the answer was "No." (R. 28)

As to whether or not the confession was voluntary, the Court ruled that was a factual issue.

The defense counsel informed the Court that he took the position that the confession was not admissible, inasmuch as the defendant's legal rights were involved, in that the police officers held him an unreasonable time in order to get the alleged confession; that he was arrested at 2:00 A.M., Friday, June 6th, without a warrant. They didn't bring him into court on that date, they wanted to question him, and although he denied the theft they continued to question him. Defense counsel also informed the Court that they had an opportunity to bring the defendant before a police magistrate or the U. S. Commissioner, on June 7th, 1947, but they did not.

They waited and took him to the home of the complaining witness on Saturday night, June 7th, about 9:00 o'clock, at which time he is alleged to have made a confession.

Culpepper also testified that the defendant had not been beaten to get the confession, but taken to the home of the complaining witness (R. 83).

It is pointed out by the defense counsel that in the McNabb, Mitchell, and Akowsky cases that the confession was not admissible. The Court ruled that the confession was admissible.

Thereafter, Mrs. Pearce returned to the stand and in the presence of the jury related that the defendant came to her house about 9:00 P.M., on June 7th, and admitted stealing her watch. The prosecution then read the alleged confession to the jury (R. 83).

Culpepper testified before the jury that he took the defendant to the home of the complainant, Mrs. Pearce, about 9:00 P.M., June 7th, and his confession to Mrs. Pearce in the presence of Captain Pearce (Metropolitan Police) that he stole her watch. Furr testified to the jury that the defendant signed a written confession about 9:00 A.M., June 7th, admitting the theft of the watch.

DEFENDANT'S TESTIMONY

The defendant testified that they had threatened to kill him on June 6th, about 11:00 A.M., unless he confessed to stealing the watch in question; that Furr started banging him on the head and in the stomach shortly after he was taken to the precinct (R. 82).

The defendant testified that he told Furr about 3:30 P.M., that he took the watch in order to get them to stop beating him. The defendant testified that he did not know whether he signed the alleged confession offered in evidence or not, but he did sign a paper without reading it (R. 84).

The defendant testified that Culpepper did not tell him where he was taking him when they left on Saturday night for the home of Mrs. Pearce, but said he was going some place, the descriptive language the defendant did not wish to use (R. 87). While they were en route to the home of Mrs. Pearce a storm came up and they had to park the car.

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The defendant testified that at that time Culpepper said to him:

"You're going to know something about this watch between now and morning. I want you to tell Captain Pearce's wife the same thing you have said on the statement or else." (R. 88)

The defendant testified that he confessed to Mrs. Pearce of taking the watch, but not of his own free will (R. 89). The defendant testified that he made a report to the jail physician at his earliest convenience, which was July 11th, 1947, that he had been beaten by police officers (R. 91). The physician's report showed that the defendant did make a report of having been beaten by police officers (R. 115).

Mrs. Pearce, called by the defense counsel, testified that five men had worked in her house and that Culpepper told her that the defendant was the only one who had a record. Culpepper and Furr, called in rebuttal, testified that nothing unusual had happened between the time they arrested the defendant and when he allegedly confessed to the crime. Defense counsel inquired of the officers if they had mistreated or beaten the defendant, and if they had, would they admit it in court. Their answer was they would admit it if true but that they did not beat him.

The defense moved for a judgment of acquittal when the Government rested its case and again when it completed the rebuttal. The defense counsel also argued a motion for a new trial which was denied.

Attorney for defendant noted and perfected an appeal to the United States Court of Appeals for the District of Columbia. After defendant's (appellant's) brief was filed, a confession of error and motion to remand was filed by the United States District Attorney for the District of Columbia. The Appellate Court confirmed the judgment of the District Court in a 2 to-1 decision.

SPECIFICATION OF ERROR TO BE URGED

The Court of Appeals Erred:

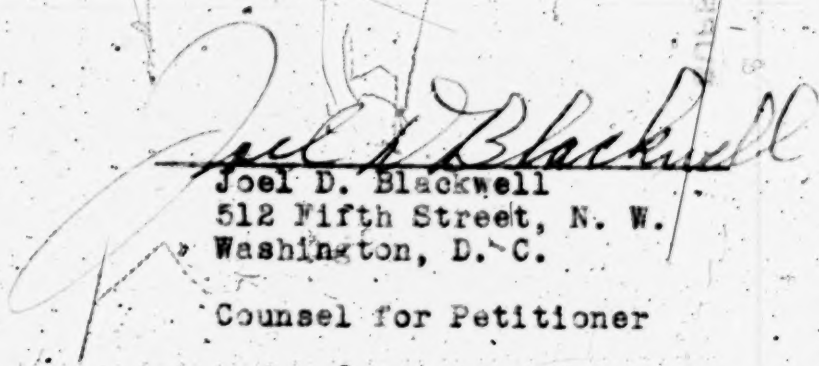
1. In holding that the facts of the instant case do not fall within the rule of McNabb v. United States, 318 U. S. 332.
2. In its failure to rule on the validity of the admissibility in evidence of an alleged third confession made at the home of the complaining witness forty-one (41) hours after petitioner's arrest and prior to his arraignment, although police officer had two full days prior to said confession to have arraigned petitioner.
3. In holding that petitioner contented himself with saying he was illegally detained from 2:00 A. M. on Friday until arraignment on the following Monday and did not rely on the questioning as an aggravating circumstance.
4. In its failure to grant the United States District Attorney's Confession of error and Motion to remand.
5. In confirming the Judgment of the trial Court.

REASONS FOR GRANTING WRIT

The Judgment of the Court of Appeals is clearly contrary to the McNabb case. One of the Appeals Court Justices gave a strong dissenting opinion holding that the Judgment of the trial Court should be reversed because of the rule in McNabb v. United States. The United States District Attorney filed a confession of error and motion to remand the case to the District Court with directions to vacate the Judgment and enter a verdict of acquittal. The District Attorney in support of his position relied on McNabb v. United States.

CONCLUSION

For the reasons stated it is respectfully submitted that the petition for writ of certiorari should be granted.


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